

14 Aug 92
Scott/bw/4626MEMORANDUM FOR O&M DISTRIBUTION #2
(Number 92-115) Exp 30 Sep 92SUBJECT: Clarification of the Seizure Provisions of the
Archeological Resources Protection Act (ARPA)

1. These guidelines are designed to clarify CE policy and reduce misunderstanding when that policy may conflict with information made available in ARPA training, while maintaining full protection of cultural resources. The ARPA provides the primary avenue of legal protection for historic and prehistoric archeological sites occurring on Federal property. The Fort Worth District has an exceptional record of ARPA enforcement that reflects the quality and dedication of the personnel charged with protection of cultural resources.

2. The critical provisions of ARPA make it illegal to excavate or remove any archeological resources from Federal (or Indian) land without a permit from the Federal land manager. While sites on Corps of Engineers O&M projects are generally protected under 36 CFR 327.14, ARPA provides more substantial penalties in the cases of vandalism. Specifically, the portions of ARPA which provide the guidance for penalties and definitions of illegal activities are:

- SECTION 6 - Prohibited Acts and Criminal Penalties
- SECTION 7 - Civil Penalties
- SECTION 8 - Rewards; Forfeiture

Section 8(b) has caused the most concern for resource managers on CE property. Section 8(b) provides for seizure (forfeiture) of property used "in connection with such violation..." This clause, coupled with case histories of enforcement actions from the BLM, Forest Service, and the NPS (used as examples during the ARPA training courses), presents a powerful legal tool.

3. However, the clause itself, if not its enforcement, contradicts written CE policy for O&M personnel. ER 1130-2-420 states, in paragraph 5. Policy., "Park managers and rangers cannot arrest, search or seize..." To prevent confusion in exercising ARPA actions, and to ensure safety for CE personnel, and consistency of application of law enforcement authority, the following guidelines are offered:

a. When site vandalism is encountered in progress, it is always advisable to contact local law enforcement personnel BEFORE approaching the violators.

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b. Always request voluntary compliance in returning artifacts. If the artifacts are not voluntarily relinquished, do not force the issue. Leave it to the discretion of the law enforcement personnel to pursue the necessity for additional searches or seizures. If you are alone, NEVER pursue the issue of unreturned materials, other than to note your actions and your best estimate of the numbers and types of artifacts involved in the violation report.

c. Items associated with site destruction (screens, shovels, etc.) should not be seized unless by law enforcement personnel.

d. Treat vandalism of sites as you would any other theft or destruction of government property. Always fully document the damage with photos, descriptions, license numbers, and written commentaries. The ARPA workbook has examples of site damage reports that can be followed. ALWAYS have law enforcement personnel handle any evidence collection necessary for major cases.

e. Contact the Operations archeologist as soon as possible to report violations.

f. Refer larger cases to the US Attorney for further legal actions. This may ultimately include civil or criminal penalties, including the forfeiture of materials used in the ARPA violations.

4. Safety of CE personnel is the primary concern in exercising ARPA procedures. NEVER confront site vandals where any threat of weapons exist.



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